IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4373 OF 2007
IN
SUIT NO. 3192 OF 2007

Satish Janyantilal Patel. ... Plaintiff.

V/s.

Pratapbhai H. Talsania & Ors. ... Defendants.

Mr. N.J. Thakkar, Sr. Counsel with Mr. Naresh S. Fadia for the Plaintiff.
Mr. F. Divetre, Sr. Counsel i/b. Mr. Girish Rao for Defendants 1 and 2 and heirs of Defendant 1 added Defendants 6 to 8.
Mr. Snehal Shah i/b. S.B. Kotak & Co. for Defendant 3 & 4.
Mr. S.U. Kamdar i/b. Purnanand & Co. for Defendant 5.

CORAM : DR. D.Y. CHANDRACHUD,J.

29TH NOVEMBER 2007.

P.C. :-

. Counsel appearing on behalf of the Defendants have consented to the Notice of Motion being disposed of finally at this stage. The submission urged on behalf of the Defendants is that the Plaintiff is not entitled to interim relief on the basis of the averments in the plaint as they stand. Accordingly, the Notice of Motion has been taken up for hearing.

2. The Plaintiff has applied for the appointment of a receiver and for injunction in a suit for specific performance. The suit for specific performance is of two agreements dated 11th December 1997 and 31st March 1998. The suit was instituted on 31st October **2007**. The case of the Plaintiff is that the father of Defendants 3 and 4 held a Power of Attorney executed on 18th December 1993 by the First Defendant and that the agreement was executed acting on the strength of the Power of Attorney. According to the Plaintiff the total agreed consideration was Rs. 1.95 crores, out of which Rs.75 lakhs was paid in **cash** under the first agreement and an amount of Rs.50 lakhs was again paid in **cash** under the second agreement.

3. On the basis of the case of the Plaintiff as it stands, there is merit in the defence that no interim relief can be granted in the Notice of Motion; for the following reasons :

Firstly, it is now not disputed that the original First Defendant expired on 28th December 1995. The Plaintiff has in fact sought the leave of the

Court to delete the First Defendant from the suit when the motion came up for hearing. The Power of Attorney therefore which is executed on 18th December 1993 could not have been pressed in aid to execute an agreement on 11th December 1997 and the supplementary agreement on 31st March 1998 since the executant had already expired much prior to the dates on which the agreements were executed.

Secondly, even according to the Plaintiff the Power of Attorney was executed by the First Defendant. In so far as the Second Defendant is concerned, it is not the case of the Plaintiff that he had executed the document.

Thirdly, both the agreements and the plaint are silent in regard to the manner in which the payment of Rs.75 lakhs and Rs.50 lakhs respectively was made. At the hearing of the motion, it has been submitted that the payment was made entirely in cash.

Fourthly, the Plaintiff has himself relied upon

photographs at Exhibit P to the plaint, which show that two buildings have already been constructed. The Court has been informed that two buildings consisting of a basement, ground floor and 5 floors each have already been completed. The first agreement dated 11th December 1997 provided that the transaction will be completed upon the payment of the balance within two years from the date of the execution of the supplementary agreement. The suit has been instituted on 31st October 2007. The delay is prima facie unexplained.

5. For all these reasons, I find merit in the contention that on the averments in the plaint as they stand, the Plaintiff not entitled to interim relief.
The Notice of Motion is accordingly dismissed.

6. Counsel appearing on behalf of the Defendants state that they would forthwith furnish inspection of the lease agreement that has been executed with the Fifth Defendant on 25th December 2003, with a copy to the learned Advocate for the Plaintiff within a period of one week from today.